

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5549 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?
1 to 5 No

INDRAVADAN ASHRAM THAKKAR

Versus

AMITKUMAR MANSUKHLAL SONI

Appearance:

1. Criminal Misc.Application No. 5549 of 1997
MR VIJAY H PATEL for Petitioner No. 1-2
NOTICE SERVED BY DS for Respondent No. 1
MR MA BUKHARI APP for Respondent No. 2
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CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 06/09/2002

C.A.V. JUDGEMENT

1. By this petition under Section 482 of the Code of Criminal Procedure ('the Cr.P.C.' for short), the petitioners have prayed for quashing of the complaint filed by the respondent No.1 and registered as C.R. No.155 of 1997 on 18.6.1997 in Meghaninagar Police Station, Ahmedabad. The F.I.R. incorporates the complaint dated 19.6.1997 of the respondent wherein the offences punishable under Section 406 read with Section 114 of the Indian Penal Code ('the I.P.C.' for short) are alleged against the petitioners mainly alleging breach of trust by not repaying the amount of Rs.5,85,000/-. The petitioners are father and son. Despite service, none has remained present for or defended the respondent-original complainant.

2. According to the complaint of the respondent, the petitioners were in the business of money-lending (shroff) and the respondent was a share broker at the relevant time in 1995-96 when they came into contact and, after some transactions, the petitioner No.2, the son, was inducted as a director in the company of the respondent. The petitioner No.1, the father, also started attending the office from where they started running the business and carried on fiscal transactions. It is alleged that the respondent-complainant lent money in cash to the petitioners after encashing several cheques on different dates for various amounts totalling upto Rs.5,85,000/-. And, thereafter, the petitioner No.2 resigned as a director and went away to Australia without making any payment and the petitioner No.1 also having failed to pay afterwards, the offence of "breach of trust" was committed.

3. Bare reading of the complaint reveals that the parties had entered into business transactions of purely civil nature, and that too, in the capacity of partners or co-directors. It is not even alleged that the petitioners were paid any amount by cheque or in cash against any formal receipt. It is also not the case of the complainant that any contract or formal understanding was arrived at as regards repayment of any money by the petitioners to the respondent. Instead, the first amount of Rs.1,00,000/- alleged to have been lent for a period of six months was not repaid till the date of the complaint, i.e. 19.6.1997 and yet, according to the complaint itself, monies were lent on similar terms even in September and November of 1996. Thus, the complaint itself projects a highly improbable version.

4. Criminal Breach of Trust is defined in Section 405 of the IPC as under:

"S.405 Criminal Breach of Trust-

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."

The word "dishonestly" is defined in Section 24 of the IPC as under:

"S.24 Dishonestly-

Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

5. The above state of facts and the relevant provisions of law, in absence of anything being stated to the contrary, lends credence to the allegations made in the petition that the complaint was filed to abuse the process of law and was a counterblast to the bouncing of a cheque of Rs.50,000/- which was issued by the complainant in favour of the petitioners.

6. In the facts of the present case, the essential ingredients of the above offence, such as entrustment with any property, misappropriation or conversion to one's own use of that property or use or disposal of such property dishonestly or in violation of any legal contract are absolutely absent even in the allegations on which the complaint is based. That fact lends credence to the allegations of the petitioners that the complaint has been filed with an intention to harass the petitioners with malicious intention and by abusing the process of law. It is true, as submitted by the learned Additional Public Prosecutor, that the power of quashing criminal proceeding should be exercised very sparingly with circumspection and only in the rarest of rare cases. However, as held by the Apex Court in the landmark judgment of STATE OF HARYANA v. BHAJAN LAL [1992 Suppl. (1) SCC 335], where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the

accused or where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused, the special power under Section 482 of the Cr.P.C. could be exercised to prevent abuse of the process of the Court and to secure the ends of justice. It is also recently held by the Apex Court in G. SAGAR SURJI v. STATE OF U.P. [(2000) 2 SCC 636] that if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence, the jurisdiction of this Court under Section 482 of the Cr.P.c. has to be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

7. In the result, accordingly, the complaint registered as C.R. No.155 of 1997 in Meghaninagar Police Station, Ahmedabad is quashed and the proceedings pursuant to that, i.e. Criminal Case No.1159 of 1997 pending in the Court No.11, Metropolitan Magistrate, Ahmedabad, according to the statement made at the Bar, are quashed. Rule is made absolute with no order as to costs.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)

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